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November 15, 2006

Law Offices

**Re: *Change in Ownership – Incapacity of Settlor-Trustee***

Dear Mr. \_\_\_\_\_ :

This is in response to your e-mail dated May 10, 2006, to Mr. Tom Hudson of Honorable Bill Leonard's office, regarding the change in ownership consequences of: (1) a substitution of a trustee of a revocable trust; and (2) the trust becoming irrevocable while the trustor remains the present beneficiary of the trust. For the reasons set forth below, we conclude that there is no change in ownership under either of the two events.

### **Questions Presented**

Does a change in ownership of the real property held by a revocable living trust occur when a trustor-trustee becomes incapacitated, whereupon, under the terms of the trust document:

1. Another person succeeds as Successor Trustee; and
2. The trust becomes irrevocable, with the trustor remaining the present beneficiary of the trust?

### **Law and Analysis**

Section<sup>1</sup> 60 provides that a change in ownership occurs upon a transfer of a present interest in real property, including the beneficial use of the property, with a value substantially equal to the value of the fee interest. For purposes of change in ownership involving a trust, it is necessary to "look through the trust" to determine the parties between whom a transfer is taking place. If there is no transfer of the beneficial interest, then no change in ownership occurs. Thus, the substitution of a trustee in and of itself is not a change in ownership. (Cal. Code Regs., tit. 18, § 462.240, subd. (b).) Accordingly, under the facts you present, there is no change in ownership upon the naming of the Successor Trustee.

Additionally, there is no change in ownership when property is transferred into a revocable trust. (Rev. & Tax. Code, § 62, subd. (d).) However, a change in ownership occurs when a revocable trust becomes irrevocable unless the trustor-transferor remains or becomes the

<sup>1</sup> All section references are to the Revenue and Taxation Code unless otherwise indicated.

sole present beneficiary of the trust, or unless otherwise excluded from change in ownership. (Cal. Code Regs., tit. 18, § 462.160, subd. (b)(2).) Here, assuming that the trust becomes irrevocable upon the trustor's incapacity, there is no change in ownership when the trust becomes irrevocable because the trustor remains the present beneficiary of the trust.

The views expressed in this letter are only advisory in nature. They represent the analysis of the Board staff based on present law and the facts set forth herein. Therefore, they are not binding on any person or public entity.

Sincerely,

*/s/ Carole Ruwart*

Carole Ruwart  
Senior Tax Counsel

CR:eb

Precedent/Trusts/Ruwart/06/267.cr

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